

1 HON. JAMES L. ROBART
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 ADAM DUNAKIN, by and through his
14 parent and next friend, KIMBERLEE
15 HOLLINGER individually, and on behalf of
16 similarly situated individuals,

17 Plaintiff,

18 v.

19 KEVIN W. QUIGLEY, in his official capacity
20 as Secretary of the Washington State
21 Department of Social and Health Services;
22 and DOROTHY F. TEETER, in her official
23 capacity as Director of the Washington State
Health Care Authority,

Defendants.

NO. 2:14-cv-00567-JLR

[PROPOSED]

ORDER GRANTING FINAL
APPROVAL OF SETTLEMENT
AGREEMENT AND AWARDING
ATTORNEYS' FEES AND
LITIGATION COSTS

Noted for Hearing:
January 9, 2017 at 10:00 a.m.

JLR

19 I. BACKGROUND

20 On September 12, 2016, this Court preliminarily approved a proposed Settlement
21 Agreement, attached as *Appendix 1* to the Motion for Preliminary Approval
22 ("Agreement"), between the Class and defendants Lashway and Teeter ("Defendants").
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1 Dkt. No. 76. In conjunction with that Order, the Court directed notice to be provided by
2 direct mail to all class members by defendants. The Court approved a form of notice.

3 The Order also provided that class members who wished to comment on or object
4 to the proposed Agreement were required to do so by December 12, 2016. Class members
5 were informed of their rights, and of this deadline, in the notices that were mailed to
6 them.

7 The Order further scheduled a final settlement hearing, which was held on
8 January 9, 2017, at 10:00 a.m., to consider objections and comments by class members and
9 to determine whether the proposed Agreement is fair, reasonable, adequate, and should
10 be approved by the Court.

12 **II. FINDINGS**

13 1. The parties have reached a Settlement Agreement that provides for a
14 comprehensive reform of defendants' Pre-Admission Screening and Resident Referral
15 (PASRR) system, required under the Nursing Home Reform Act. The Settlement
16 Agreement establishes procedures for ensuring timely PASRR Level I screenings, Level
17 II evaluations, Post-PASRR Level II meetings and, ultimately, the provision of specialized
18 services to increase class members' independence and/or discharge planning for class
19 members who are medically able and willing to live in an alternative placement in the
20 community.

21 2. The Agreement also establishes metrics for monitoring the implementation
22 of the new PASRR system, with various reporting to class counsel on a quarterly basis.
23

1 During this time, the Agreement anticipates that the Court will retain jurisdiction over
2 the case and the Settlement Agreement.

3 3. The Agreement also provides that Defendants will pay class counsel their
4 actual their actual lodestar attorneys' fees without a multiplier and its actual litigation
5 costs ("Option 1"). *Id.*, ¶¶ 9.1.1; 9.1.2. Plaintiffs submitted an unopposed motion to for
6 the Court to approve an award of attorneys' fees of \$590,345.00 and litigation costs of
7 \$65,026.59, to be paid by Defendants. Dkt. 79. No class members will be responsible for
8 payment of any attorneys' fees or costs. No class member objected to the amount of the
9 fees or expenses. Hamburger Decl., ¶2.

10 4. The Agreement also releases defendants from any and all claims for
11 injunctive relief related to the claims brought in the litigation pursuant to the Nursing
12 Home Reform Act, Medicaid Act, Section 504 of the Rehabilitation Act or Americans with
13 Disabilities Act. Agreement, ¶1.5.

14 5. The Court's Order Granting Preliminary Approval of the Settlement
15 Agreement required the Defendants to mail court-approved notices to class members by
16 direct mail. The notices informed class members that they had an opportunity to object
17 or submit comments to the Court regarding the proposed Agreement and that they must
18 do so in writing by December 12, 2016. The Order also required defendants to post the
19 class notice on its website.

20 6. Defendants reported that they mailed and posted the required class notices.
21 Class counsel also posted the class notice on the Disability Rights Washington website.
22

1 No objections to or comments on the Settlement Agreement were received by either the
2 parties or their counsel.

3 **III. CONCLUSIONS**

4 7. Federal Rule of Civil Procedure 23(e) provides that "a class action shall not
5 be dismissed or compromised without the approval of the court...." Compromise and
6 arbitration of complex litigation is encouraged and favored by public policy. *See Simula,*
7 *Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).

8 8. A presumption of fairness and adequacy attaches to a class action
9 settlement reached in arm's-length negotiations by experienced class counsel after
10 meaningful discovery. *See, e.g., Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625
11 (9th Cir. 1982); *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 209, 35 P.3d 351
12 (2001).

14 9. The following factors are generally considered when determining whether
15 a settlement is fair, adequate and reasonable: the likelihood of success by plaintiffs; the
16 amount of discovery or evidence; the settlement terms and conditions; recommendation
17 and experience of counsel; future expense and likely duration of litigation;
18 recommendation of neutral parties, if any; number of objectors and nature of objections;
19 and the presence of good faith and absence of collusion. *Officers for Justice*, 688 F.2d at
20 625.

21 10. Based upon these factors, the Court finds that the Agreement is fair,
22 reasonable, and in the best interests of the Class. The requirement of FRCP 23 and due
23 process have been satisfied.

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1 11. Specifically, the Court concludes that the Agreement was the result of
2 arm's-length bargaining. It was reached after extensive discovery and motions practice,
3 including a decision by this Court granting partial summary judgment on whether
4 defendants had properly implemented the PASRR program. Although the Class had a
5 strong likelihood of success, a settlement that results in systemic reform of the PASRR
6 system to bring it in compliance with legal requirements, achieves the goals of the
7 litigation. There is no evidence of collusion between the parties, and the agreement was
8 reached in good faith with the assistance of a neutral mediator.
9

10 12. The Class was provided with adequate notice, and due process has been
11 satisfied in connection with the distribution of the notice. There were no objections to or
12 comments on the proposed Agreement.

13 **IV. ATTORNEYS' FEES AND LITIGATION COSTS**

14 13. As permitted by the Agreement, class counsel have sought an award of
15 their actual lodestar attorneys' fees without a multiplier or reduction. That request is
16 granted, and the Court awards \$590,345.00 as attorneys' fees to be paid by defendants.

17 14. No objections were received to class counsel's fee request.

18 15. Class counsel is also entitled to reimbursement of its actual litigation costs.
19 Class counsel seeks reimbursement in the sum of \$65,026.59, reflecting its unreimbursed
20 actual out-of-pocket litigation costs and expenses. This request is supported, is
21 reasonable, and is approved.

22 16. No objections were received to class counsel's request for an award of
23 litigation costs.

17. Upon the occurrence of the conditions set forth in Section 2 of the Settlement Agreement, and by 35 days from entry of this Order if no appeal is taken, defendants shall pay the award of attorneys' fees and costs to class counsel.

V. ORDER

It is hereby ORDERED that:

1. The Settlement Agreement, Dkt. No. 71-1, Appendix 1 and Dkt. No. 74-1, Appendix A, is approved as fair, reasonable and adequate under FRCP 23, and its terms shall bind class members.

2. Class counsel is awarded fees and litigation costs as set forth above.

3. The parties to the Settlement Agreement shall perform all of their obligations thereunder. The Court shall retain jurisdiction over this matter until the Settlement Agreement is terminated, pursuant to Section 8 of the Settlement Agreement.

It is so ORDERED this 9th day of January, 2017.

James L. Robart
United States District Judge

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1 Presented by:

2 DISABILITY RIGHTS WASHINGTON

3 /s/ Susan Kas

4 Susan Kas (WSBA #36592)

5 Sarah Eaton (WSBA #46854)

6 SIRIANNI YOUTZ

7 SPOONEMORE HAMBURGER

8 /s/ Eleanor Hamburger

9 Eleanor Hamburger (WSBA #26478)

10 Attorneys for Plaintiff Class

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Angela D. Coats McCarthy**
AngelaC3@atg.wa.gov, HilaryS@atg.wa.gov, ChristineH1@atg.wa.gov,
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- **Susan Linn Kas**
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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

- (no manual recipients)

DATED: December 28, 2016, at Seattle, Washington.

/s/ Eleanor Hamburger

Eleanor Hamburger (WSBA #26478)

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